REMARKS

Claims 26 – 33 and 50 – 55 are pending in this application. New claims 50 – 55 have been added. Support for independent claim 50 may be found, for example, in independent claim 26 and 32. Support for independent claim 52 may be found, for example, in independent claim 26 and on page 8, lines 14 – 21, of the specification. Support for dependent claims 51 and 54 may be found, for example, on page 8, lines 14 – 21, of the specification. Support for dependent claims 53 and 55 may be found, for example, in dependent claim 32. Therefore, no new matter has been added by the foregoing amendments.

Claims 32 and 33 have been indicated as containing allowable subject matter if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants thank the Examiner for this indication of allowable subject matter.

In a Final Office Action mailed March 31, 2008, claims 26 – 31 have been rejected under 35 USC 103(a) as being unpatentable over Brown (US Patent No. 5,307,263, hereinafter "Brown") in view of Levin et al. (US Patent No. 5,724,580, hereinafter "Levin et al."). This rejection is respectfully traversed.

On page four of the Final Office Action, the Examiner states that "Brown does not teach measuring blood lipid levels; levels; additional diagnostic information including: a medical risk index, a recommended weight loss, a five year risk of heart attack, a ten year risk of heart attack, a cardiac age, an extended age a risk of stroke; the health report including a data sheet for newly prescribed drugs and the other currently prescribed drugs; a target weight, a schedule for future testing, a health assessment summary, a coronary risk assessment, a dietary guidelines to lower cholesterol." Claim 26 recites a "health report including one or more of the following data items: a five-year risk of heart attack, a ten-year risk of heart attack, a cardiac age, an extended age, or a risk of stroke." The combination of Brown and Levin do not teach a report that includes any of these data items.

The Examiner appears to cite Levin for the primary teaching of these data items and points to Figures 25a and 25b. Levin's sole disclosure in these figures is that the depicted report reads

"[a]vailable data indicate that this result places him in the highest risk category for a cardiac event in the next year." The Examiner goes on to say that it would be obvious to "modify Brown to extrapolate a five year risk of heart attack… ." Simply put, the teaching of extrapolating a five-year risk of heart attack is not found in the proposed combination. Therefore, the Examiner has not made a prima facie case for obviousness. Levin does not teach a five-year risk of heart attack; instead, Levin teaches placing the analyzed individual in a risk category for a cardiac event for the next year. Neither reference teaches extrapolating a risk of heart attack or reporting a risk for a time period. Therefore, claim 26 is believed to be patentable over the combination of Brown and Levin.

Furthermore, the Examiner is reminded that the failure of an asserted combination to teach or suggest each and every aspect of a claim remains fatal to an obviousness rejection under 35 U.S.C. §103, despite any recent revision to Section 2143.03 of the Manual of Patent Examining Procedure (MPEP).

Simply stated, the asserted combination of Brown and Levin must teach or suggest each and every aspect of the claims. See *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974) (emphasis added) (to establish *prima facie* obviousness of a claimed invention, all the claim features must be taught or suggested by the prior art). In fact, as the Board of Patent Appeal and Interferences has recently confirmed, a proper obviousness determination requires that an Examiner make "a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art." See *In re Wada and Murphy*, Appeal 2007-3733, citing *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis in original). Further, the Supreme Court has long held that obviousness is a question of law based on underlying factual inquiries, including "… ascertaining the differences between *the claimed invention* and the prior art. See *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966) (emphasis added). Lastly, Applicants respectfully direct attention to MPEP §2143, the instructions of which buttress the conclusion that obviousness requires at least a suggestion of all of the features of a claim, since the Supreme Court in *KSR Int'l v. Teleflex Inc.* stated that "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." See *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

In sum, it remains well-settled law that, in order to sustain a prima facie case for obviousness, a combination of references must at least teach or suggest all of the aspects of the claim in question. See *In re Wada and Murphy*, citing *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) and *In re Royka*, 490 F.2d 981, 985 (CCPA 1974). The combination of Brown and Levin do not teach all aspects of independent claim 26. Therefore, independent claim 26 is patentable over the combination of Brown and Levin. Dependent claims 27 – 33 are patentable at least by their dependency on independent claim 26.

In view of the above amendments and remarks, Applicants believe the pending application is in condition for allowance. A Request For Continued Examination and the appropriate fee are attached to this paper. If any additional fee is due, please charge our Deposit Account No. 50-1848, under Order No. 023134.0128D1US from which the undersigned is authorized to draw.

Respectfully submitted,
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